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8 Attorneys for Plaintiff

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA, )

No. C

14 Plaintiff, )

CV 12 4369  
15 24/94 kg bags, more or less, of an article of )  
16 food, labeled in part: )  
17 \*\*\* SENNA PODS \*\*\* PRODUCE OF )  
18 INDIA \*\*\* NETT 94 KGS \*\*\* Item# )  
W1520 \*\*\* Lot # 110220 \*\*\* )  
19 Nt. Wt. # 211.2 LBS \*\*\* Country )  
of Origin: INDIA \*\*\* )  
20 and )  
21 all other articles of food in various sizes and )  
22 types of containers (excluding metal and )  
23 glass containers) that are located anywhere )  
24 on the premises of San Francisco Herb and )  
Natural Food Company, 47444 Kato Road, )  
25 Fremont, California, which are unlabeled or )  
affixed with labels bearing, among other )  
26 things, the name and address of the )  
manufacturer, packer, or distributor located )  
27 outside the State of California, or which are )  
otherwise determined to consist in whole or )  
in part of components that have originated )  
from outside the State of California, )  
28 Defendants. )

VERIFIED COMPLAINT FOR EDL  
FORFEITURE IN REM

The United States of America (“United States”), by its attorney, Melinda Haag, United States Attorney for the Northern District of California, and Melanie L. Proctor, Assistant United States Attorney, respectfully states and alleges as follows,

## **NATURE OF THE ACTION**

1. The United States of America seeks seizure and condemnation of defendant articles of food as described in the caption, in accordance with the Federal Food, Drug, and Cosmetic Act ("the Act"), 21 U.S.C. 301, et seq.

2. There are at Fremont, California, in the possession of San Francisco Herb and Natural Food Company, 47444 Kato Road, or elsewhere within the jurisdiction of this Court, articles of food as described in the caption, which articles consist in whole or in part of ingredients that were shipped in interstate commerce from outside the State of California ("the articles").

## **JURISDICTION AND VENUE**

3. Plaintiff brings this action in rem in its own right to condemn and forfeit the articles. This Court has jurisdiction over an action commenced by the United States under 28 U.S.C. 1345 and 21 U.S.C. 334, which provides this Court with jurisdiction over seizures brought under the Act.

4. This Court has in rem jurisdiction over the articles because the defendant is located in the Northern District of California. Upon filing of the complaint, the United States requests the Court issue an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims (“Supplemental Rules”) of the Federal Rules of Civil Procedures, Supplemental Rule G(3)(b), which the United States will execute upon the articles pursuant to Supplement Rule G(3).

## **BASIS FOR FORFEITURE**

5. The articles of food are adulterated while held for sale after shipment of one or more of their components in interstate commerce, within the meaning of the Act, 21 U.S.C. 342(a)(4), in that they have been prepared, packed and held under insanitary conditions whereby they may have become contaminated with filth.

6. By reason of the foregoing, the articles are held illegally within the jurisdiction of this

1 Court and are liable to seizure, condemnation, and forfeiture pursuant to 21 U.S.C. 334.

2 FACTS

3 7. A Food and Drug Administration (FDA) inspection conducted jointly with  
4 investigators from the California Department of Public Health, Food and Drug Branch, on July 3  
5 through July 16, 2012, revealed a widespread and active rodent infestation in the warehouse.  
6 During the inspection, investigators observed live rodents on and around food; dead rodents  
7 throughout the warehouse and in food; numerous gnawed and urine stained packages of food;  
8 live and dead insects on food and food packages; numerous rodent excreta pellets on, in, and  
9 around food products; and apparent rodent nesting materials in food. Investigators also observed  
10 building defects, such as gaps in exterior doors, and holes leading to the outside, permitting easy  
11 pest access to the entire facility. Photographs of numerous rodent excreta pellets, rodent  
12 carcasses, and insects were taken by the FDA investigators throughout the building.

13 8. FDA laboratory analysis of samples collected during the inspection confirmed the  
14 presence of rodent excreta pellets, rodent gnawed and urine stained packaging material; and  
15 rodent nesting materials.

16 9. The articles are being held under embargo by the State of California Department of  
17 Public Health.

18 10. Accordingly, under the Act, all articles of food in permeable containers located  
19 anywhere on the premises of San Francisco Herb and Natural Food Company, have been  
20 prepared, packed, and held under insanitary conditions whereby they may have been  
21 contaminated with filth pursuant to 21 U.S.C. 342(a)(4). Seizure and destruction of these  
22 adulterated articles are necessary to protect the public health.

23 WHEREFORE, the United States of America prays:

24 1. That process issue according to the procedures of this Court in cases of action in rem;  
25 2. That any persons having any interest in the articles be given notice to file a claim and  
26 to answer the allegations in the complaint;  
27 3. That this Court enter a judgment of condemnation against the articles and grant  
28 plaintiff the cost of this proceeding against the claimant of the articles;

4. That the articles be disposed of as this Court may direct pursuant to the provisions of the Act; and

5. That the plaintiff has such other and further relief as the case may require.

Respectfully submitted,

Dated: August 20, 2012

MELINDA L. HAAG  
United States Attorney

Melanie L. Proctor

MELANIE L. PROCTOR  
Assistant United States Attorney  
450 Golden Gate Avenue  
San Francisco, CA 94102

Attorneys for Plaintiff,  
The United States

## VERIFICATION

I, SERGIO CHAVEZ, hereby verify and declare under penalty of perjury that I am a Compliance Officer with the U.S. Food and Drug Administration, U.S. Department of Health and Human Services, that I have read the foregoing Verified Complaint for Forfeiture In Rem and know the contents thereof, and that the matters contained in the Verified Complaint are true and correct to the best of my knowledge and belief.

The sources of my knowledge and information and the grounds of my belief are the official files and records of the United States, information supplied to me by other FDA employees and officers, as well as my investigation of the case, together with others, as a Compliance Officer with the Food and Drug Administration, U. S. Department of Health and Human Services.

I hereby verify and declare under penalty of perjury that the foregoing is true and correct.

Executed this 16 day of August, 2012, in Alameda, California.

SERGIO CHAVEZ  
Compliance Officer  
Food and Drug Administration